

1                   MR. KELLER: First of all, Your  
2 Honor, they were not Mobex's documents per se.  
3 Maritime acquired the assets of Mobex Network  
4 Services, Inc. These documents were in the  
5 control of Mobex Communications, which was the  
6 parent company. The parent company kept those  
7 documents.

8                   And we assume -- we do not 100  
9 percent know. We assume some of the documents  
10 probably are relevant to issues in this  
11 proceeding.

12                   But in an unrelated proceeding, in  
13 earlier litigation, the issue came up. We  
14 checked with the last remaining officer of  
15 Mobex Communications, who informed us that  
16 some years ago the documents had been placed  
17 with the storage facility, that the fees had  
18 not been paid, that he had been told by the  
19 storage facility that the documents were going  
20 to be destroyed because of nonpayment. That  
21 was several --

22                   JUDGE SIPPEL: Well, the point is

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1 that the documents now exist.

2 MR. KELLER: No. I --

3 JUDGE SIPPEL: You don't know?

4 MR. KELLER: No. Apparently they  
5 do exist. And that's why --

6 JUDGE SIPPEL: Well, are you going  
7 to take a look at them and see?

8 MR. KELLER: Absolutely.  
9 Absolutely.

10 JUDGE SIPPEL: And if they do  
11 exist, are you going to turn them over to the  
12 Bureau?

13 MR. KELLER: I don't know that we  
14 have control over them, but certainly we have  
15 no problem --

16 JUDGE SIPPEL: Well, why not? Why  
17 wouldn't you have control?

18 MR. KELLER: Because still they're  
19 not our documents. They're documents that are  
20 in possession of the storage facility.  
21 There's a payment issue. They're not  
22 documents that were ever in the control of

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1 Maritime per se.

2 But certainly in the context of  
3 the New Jersey litigation, if these documents  
4 become available or otherwise become  
5 available, we will certainly make every effort  
6 to examine these documents and because, as far  
7 as I'm concerned, there is nothing in there  
8 that wouldn't help us.

9 MR. HAVENS: I was cut off.

10 JUDGE SIPPEL: Yes, you were.

11 MR. HAVENS: Yes. Well, I would  
12 like to at some opportunity finish a point or  
13 two, sir?

14 JUDGE SIPPEL: Well, can you  
15 address what Mr. Keller said?

16 MR. HAVENS: No. Mr. Keller spoke  
17 about a half-hour. I'm not looking for a long  
18 time. I am simply asking time to make a few  
19 points, and that's all. And I was right in  
20 the middle of making the few points you said  
21 I could make.

22 JUDGE SIPPEL: Well, I know, but

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1 I'm sorry. I apologize for being rude to you  
2 in that respect, but I am doing it for a  
3 reason and not because of anything personal.  
4 I am trying to get something done here.

5 MR. HAVENS: Your Honor?

6 JUDGE SIPPEL: Hold on just a  
7 second.

8 MR. HAVENS: All right.

9 JUDGE SIPPEL: Mr. Jackson said  
10 something about having these. Do you have  
11 these documents, Mr. Jackson? Are these the  
12 ones you were talking about?

13 MR. JACKSON: These are the  
14 documents that I had mentioned that -- other  
15 counsel, Mr. Havens' counsel in other matters,  
16 the SkyTel companies' counsel in other  
17 matters, have located them, got a subpoena  
18 from the federal court, District of New  
19 Jersey, on these.

20 And we are trying to make sure --  
21 it might be appropriate for Your Honor to  
22 issue some sort of an order to protect

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1 evidence because this certainly is probably  
2 relevant so that these documents can be  
3 reviewed and we can make sure that they are  
4 all there and we can find out what is relevant  
5 to this case.

6 MS. KANE: Well, do you have  
7 control over those documents?

8 MR. JACKSON: No, we don't. They  
9 are under the control of the storage company.

10 JUDGE SIPPEL: How did you get  
11 access to them, then?

12 MR. JACKSON: A judge in the  
13 federal court in New Jersey issued a subpoena.  
14 And I believe they are still being  
15 inventoried, that they are still searching for  
16 -- initially they thought that there were  
17 about 30 boxes. And then it turned to 40 and  
18 so on. And so I believe the custodians are  
19 still looking at these. But these boxes were  
20 not destroyed.

21 JUDGE SIPPEL: Okay. Hold on just  
22 a second now. Ms. Kane, does that help you at

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1 all?

2 MS. KANE: Well --

3 JUDGE SIPPEL: Do you want to look  
4 into that?

5 MS. KANE: We definitely want to  
6 know what's in these documents.

7 JUDGE SIPPEL: Well, apparently  
8 they have been ordered to be produced by a  
9 judge in New Jersey.

10 MS. KANE: To Mr. Havens.

11 JUDGE SIPPEL: To Mr. Havens, yes.  
12 This is prior to this case.

13 MR. HAVENS: Well, anyone who  
14 would like to know what Mr. Havens has to say  
15 about it, I'll convey. At some point in time,  
16 I'm willing to convey what I know.

17 JUDGE SIPPEL: Well, that's very  
18 generous of you, sir, but hold on. I want to  
19 make sure that I am clear with counsel on  
20 this.

21 MR. HAVENS: All right. Well, I  
22 have --

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1 JUDGE SIPPEL: Just a second. You  
2 are going to get your turn.

3 MS. KANE: The Bureau would like  
4 access to these documents, whether it comes  
5 through a discovery request to Mr. Havens or,  
6 frankly, we think it's more appropriate that  
7 Maritime produce these documents because we  
8 don't understand how it is that they do not  
9 have control over documents that relate to the  
10 --

11 JUDGE SIPPEL: You know as well as  
12 I do that that is not going to happen. That's  
13 the hardest group to take. If Mr. Havens has  
14 the documents or access to the documents  
15 through Mr. Jackson and they're prepared to  
16 make them available or if you're prepared to  
17 make the effort to pursue that line up there  
18 in New Jersey courts --

19 MS. KANE: Your Honor, we don't --

20 JUDGE SIPPEL: -- assuming that  
21 you can get access to --

22 MS. KANE: Your Honor, we don't

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1 believe we should have to go through the New  
2 Jersey courts.

3 JUDGE SIPPEL: I don't --

4 MS. KANE: Mr. Havens is a party  
5 in this case. We should be able to serve him  
6 with a discovery request.

7 JUDGE SIPPEL: He's going to  
8 answer that question, I think. Certainly --

9 MR. HAVENS: I would be delighted  
10 to be served with a subpoena. I would be  
11 delighted as we are already arranging to pay  
12 for the scanning of the documents, 20 or 30  
13 thousand dollars, where under -- we're going  
14 to do that process for both the bankruptcy  
15 proceedings because these are assets of the  
16 estate of the debtor-in-possession. We are  
17 doing this in New Jersey. We would be  
18 delighted to give a copy to the Enforcement  
19 Bureau, subpoena or not.

20 JUDGE SIPPEL: Well, let me take  
21 Ms. Kane up on that because I think that is a  
22 very significant offer. And I am hoping to

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1 see some movement on it.

2 MS. KANE: We're happy to serve --  
3 we don't think it needs a subpoena, Your  
4 Honor. He's --

5 JUDGE SIPPEL: Would you listen to  
6 what the man is saying? He said with or  
7 without a subpoena.

8 MS. KANE: And we --

9 JUDGE SIPPEL: But you have to  
10 make some kind of a request.

11 MS. KANE: But, Your Honor, we  
12 have requested this information from him  
13 before. We have had a --

14 MR. HAVENS: You have not.

15 MS. KANE: -- conversation with  
16 him about this.

17 MR. HAVENS: You have not  
18 requested that. I'm sorry. I have offered  
19 that to you. I have told you about that. I  
20 have asked you about that for about 18 months,  
21 that the documents are in the storage facility  
22 because Maritime has stated that.

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1           No one made a phone call. I am  
2           the first one to make a phone call to counsel.  
3           You have not asked me before to go get and  
4           deliver these documents. I just keep offering  
5           the documents.

6           And so as soon as we have them,  
7           you can come hand in hand with us. You can  
8           split the cost, whatever you want. But we are  
9           getting the documents. We will make them  
10          fully available to you.

11          MS. KANE: Your Honor, that's all  
12          we will do is we will --

13          JUDGE SIPPEL: It seems to be open  
14          and shut, but you're going to have to do  
15          something to formalize this a little bit.

16          MS. KANE: We're happy to --

17          JUDGE SIPPEL: We need to get a  
18          letter. Give him a letter.

19          MS. KANE: We are happy to serve  
20          him a letter or a discovery request, whatever  
21          he would like, that formally requests the  
22          documents that he doesn't currently have in

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1 his possession yet.

2 MR. HAVENS: I would -- please  
3 give me the letter. I would appreciate that.  
4 I will expedite you everything I can to help,  
5 to keep you fully informed, and cover the  
6 cost.

7 JUDGE SIPPEL: There you go.

8 MS. KANE: We're fine with that,  
9 Your Honor.

10 JUDGE SIPPEL: All right. Then do  
11 it. Then do it.

12 MS. KANE: We will.

13 JUDGE SIPPEL: Do it. Well, send  
14 me a copy of what you send him. It can be a  
15 letter, anything in writing, so that we can  
16 get the process, at least get that to that  
17 extent, under control.

18 We have a record we are making of  
19 this conference, not a hearing. And he has  
20 made a commitment on the record. So you're  
21 pretty safe. You're pretty safe.

22 And he's not even asking you to

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1 spend any of the government's precious money.  
2 So sit tight. And go after it as best you  
3 can.

4 I've just lost confidence in what  
5 Maritime is going to do as far as the document  
6 goes. But at least I'm going to keep that  
7 date with respect to the stipulation.

8 Talking about stipulations,  
9 anything about these stations that you can  
10 stipulate to? You know what the universe of  
11 all of this is -- if you can. What you can't  
12 stipulate to, the reasons why you can't  
13 stipulate to it.

14 And I want this by specific  
15 stations and then stipulations as to what  
16 would be a good hearing date. And I will  
17 proceed on that basis and the end of  
18 discovery.

19 MS. KANE: Your Honor?

20 JUDGE SIPPEL: That's it.

21 MS. KANE: What do we do about the  
22 stations to which we won't be able to

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1 stipulate other than to suggest -- do you want  
2 pleadings on that? Do you want another --

3 JUDGE SIPPEL: I am going to look  
4 into it from my end first. Yes. If you want  
5 to voluntarily give me a five-page memorandum  
6 on this point of law that I am trying to get  
7 a finger on?

8 One of the parties has complete  
9 control or has access to information that is  
10 not being produced in discovery. Then the  
11 burden is going to shift to that party to  
12 prove that -- in other words, to prove the  
13 negative.

14 You're saying that he said --  
15 you've got the burden of proving construction.  
16 But how the hell are you going to prove  
17 construction? You have nothing to do with  
18 construction. He's not giving you anything to  
19 show that he's done anything about  
20 construction.

21 MR. KELLER: Your Honor, that is  
22 not correct.

1 JUDGE SIPPEL: That is right.

2 Some --

3 MR. KELLER: We've given  
4 everything we have.

5 JUDGE SIPPEL: I don't like that  
6 answer.

7 MR. KELLER: Well, we can't give  
8 more than we have.

9 JUDGE SIPPEL: Well, I don't think  
10 that you tried hard enough to get all of the  
11 information she needs. I can't believe that  
12 you have licenses to stations and nobody knows  
13 anything about it.

14 MR. REARDON: Your Honor, that's  
15 the truth.

16 JUDGE SIPPEL: All right. Well,  
17 if that's the truth, then that's the truth.  
18 That might be. But I think it's going to be  
19 your problem. It's not going to be the  
20 Bureau's problem.

21 MR. HAVENS: Your Honor, could I  
22 make a few more points on the long

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1 presentation by Mr. Keller and Ms. Kane on  
2 this construction and operation issue?

3 JUDGE SIPPEL: Well, I guess you  
4 can. I will let you do it, but I'm not going  
5 to make anybody stay around for it. We'll  
6 hear it on the record.

7 MR. HAVENS: Sure. Thank you.

8 One of the points that Mr. Keller  
9 asserted is that the construction has been  
10 adjudicated. That is not correct. I know all  
11 of these proceedings. I'll be glad to show  
12 you.

13 There has never been a showing by  
14 either Maritime or Mobex or any of the  
15 predecessors that they know anything at all by  
16 any construction deadline.

17 Construction does not mean an  
18 operating station. It means they built it  
19 with equipment and in the case of --  
20 interconnect at the construction deadline.

21 Mr. Keller also made a long  
22 argument about the geographic licenses that

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1 Maritime has are subject to some of the  
2 site-based licenses. That presupposes that  
3 there is a definition of the coverage area of  
4 the site-based licenses.

5 The Wireless Bureau has issued to  
6 Maritime two orders that Maritime turn over to  
7 SkyTel entities because we hold the geographic  
8 licenses in most -- in large part of the  
9 country subject to the Maritime site-based  
10 licenses.

11 But under FCC rules 80.385B, we  
12 have the right -- according to two orders from  
13 down at the Wireless Bureau, we have the right  
14 to get from Maritime these details on its  
15 actual operating site-based stations so that  
16 we know how we can use our geographic spectrum  
17 up to the limits of its F-5050 contour. We  
18 can't determine the F-5050 contour without  
19 those details.

20 Maritime counsel has written back  
21 to us several times in its documents in our  
22 New Jersey litigation that we will not

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1 provide, Maritime will not give us, those  
2 details.

3 The issue is that Maritime cannot  
4 state that only its geographic licenses are  
5 subject to the site-based licenses. That is  
6 all. Those site-based licenses are in the  
7 middle. Many of them are in the middle of my  
8 companies' geographic licenses. And we're  
9 being barred from using our geographic  
10 licenses around the country for that reason.

11 And, plus, there are some on the  
12 borders between the geographic licenses that  
13 my company holds and Maritime holds. Some of  
14 their site-based station coordinates are near  
15 the borders. And we can't tell, nor can  
16 Maritime, how that site-based license affects  
17 the geographic licenses, ours and theirs,  
18 until they produce evidence and give it to us  
19 of what they are actually operating.

20 Now, if they are not operating at  
21 all and they don't have any evidence of  
22 construction and, yet, they are trying to

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1 maintain those stations, the whole thing just  
2 breaks apart. The whole purpose of the  
3 site-based versus the incumbent breaks apart.  
4 I mean, that gets back to the issue of why  
5 does Maritime not have any evidence of the  
6 construction?

7 It answered that. It said the  
8 information that it had when it bought the  
9 stations from the licenses and the physical  
10 stations from Mobex, those documents were --  
11 Maritime has stated that it was satisfied  
12 looking at those documents of construction and  
13 operation. It was satisfied. It chose not to  
14 keep those documents. Let them remain with  
15 Mobex.

16 Mobex put them in storage, didn't  
17 pay the storage fee. Mr. Keller testified  
18 that he believed that his company -- his  
19 client believed that it was in storage. All  
20 the client had to do throughout this whole  
21 hearing or at any time, you know, since  
22 Maritime bought these, all it had to do is

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1 make one phone call to the storage company,  
2 whose name they knew, to find out if those  
3 documents were still there.

4 Those are the 100 boxes we're  
5 getting.

6 JUDGE SIPPEL: Are you finished?

7 MR. HAVENS: Yes, sir.

8 JUDGE SIPPEL: Okay. Hold on a  
9 second. We've got a question.

10 MR. PLACHE: From Pinnacle's --

11 JUDGE SIPPEL: Yes. Pinnacle's  
12 counsel. Yes, sir. Say your name again, sir.

13 MR. PLACHE: Matthew Plache.

14 JUDGE SIPPEL: All right. Thank  
15 you.

16 MR. PLACHE: From the standpoint  
17 of Pinnacle Wireless and its concerns,  
18 Pinnacle is concerned about station WRV374.  
19 And we would want to make sure that any  
20 information in those 100 boxes relevant to  
21 construction of WRV374 is being preserved.

22 JUDGE SIPPEL: WRV374?

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1 MR. PLACHE: Three seventy-four.

2 JUDGE SIPPEL: Where is that  
3 station located?

4 MR. PLACHE: Up and down the East  
5 Coast. The Pinnacle Wireless is using it in  
6 New Jersey to operate its system for the  
7 turnpike authority and for the Meadowlands.

8 JUDGE SIPPEL: I remember reading  
9 that story as I was going to go drive up the  
10 turnpike.

11 MR. PLACHE: We don't have  
12 information on the original construction 20  
13 years back.

14 JUDGE SIPPEL: You don't?

15 MR. PLACHE: We don't because  
16 there is no way we would have information on  
17 that. We know that a company called  
18 Regionette owned the license at one point and  
19 actually was the tenant paying for the lease  
20 who was listed as the lessee at one of the  
21 sites that as operating under that license.  
22 So we know that Regionette was operating just

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1 based on that information.

2 JUDGE SIPPEL: But does this have  
3 anything to do with anything that Mr. Havens  
4 has, any of his geographic licenses?

5 MR. PLACHE: Apparently Mr. Havens  
6 holds the geographic license for part of the  
7 coverage in New Jersey.

8 JUDGE SIPPEL: Is that right, Mr.  
9 Havens?

10 MR. HAVENS: One of my companies  
11 has the --

12 MR. PLACHE: Actually, not Mr.  
13 Havens. One of his companies that he is not  
14 acting as counsel for.

15 JUDGE SIPPEL: Well, but --

16 MR. HAVENS: Look, I represent my  
17 companies in the licensing matters before the  
18 FCC. That is what you are asking about. I  
19 can certainly address that.

20 JUDGE SIPPEL: Well, as a fact  
21 witness, not as a lawyer and not as an expert.

22 MR. HAVENS: Fine. You know, the

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1 issue here is Maritime issue G. We have gone  
2 over these boxes.

3 JUDGE SIPPEL: Are you going to  
4 answer? Wait a minute. Now, wait a minute.  
5 Mr. Plache has a question or he made a point  
6 about station WRV374 in the New Jersey  
7 geographic area.

8 MR. HAVENS: Sure. Yes.

9 JUDGE SIPPEL: Do you have  
10 anything to do with that station?

11 MR. HAVENS: Yes. One of my  
12 companies holds the A block, geographic, and  
13 CF license for the Northeast, which extends  
14 down into roughly half of New Jersey. And in  
15 that northern half of New Jersey and along the  
16 border, Maritime has certain stations under  
17 its site-based license WRB374. So Pinnacle  
18 counsel is correct to that extent.

19 JUDGE SIPPEL: Okay. So Maritime  
20 has the site-based and you have the  
21 geographic. Now, what is the name of the  
22 company that you say that has that?

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1                   MR. HAVENS:    Let me think.    I  
2                   think -- you know, I would have to look that  
3                   up because we have one -- we have the A block  
4                   and the B block in the Northeast.  And one of  
5                   them is Environmental, LLC.  I believe that  
6                   has the B block.  The other one I believe is  
7                   Intelligent Transportation and Monitoring  
8                   Wireless, LLC.  That has A block.  I'd have to  
9                   verify that.

10                  JUDGE SIPPEL:   Well, I got you  
11                  stumped on one.  Go ahead.  You verify and let  
12                  us know.  Email would be fine.

13                  MR. HAVENS:    Okay.  Email is fine.  
14                  I will send an email, and I will verify.

15                  In terms of the preservation of  
16                  the boxes, that is our first goal.  And we are  
17                  doing that in a way that -- you know, we are  
18                  not going to touch the boxes.  My companies  
19                  and my counsel will have a bonded third party  
20                  contractor to take all action with the storage  
21                  company to scan and preserve on a CD all of  
22                  the boxes, all of the contents as they are at

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1 this time so that all of the parties will be  
2 assured that the evidence is exactly as it has  
3 been.

4 JUDGE SIPPEL: I am going to ask  
5 you this. Actually, I am going to require it.  
6 I want to get from you a pre-status report on  
7 all business about those documents by the  
8 31st. I'm not saying you have to have  
9 everything done. I'm just saying let me know  
10 what actually is the status of getting things  
11 done at that point.

12 And just again you can do it by  
13 email. Send copies to all of the other  
14 parties and lawyers. Okay?

15 MR. HAVENS: Yes, sir.

16 JUDGE SIPPEL: All right. And let  
17 me ask you one other question. You cited to  
18 a rule, 80. something.

19 MR. HAVENS: Yes, 80.385B. And  
20 that rule, in essence, provides that the  
21 geographic licensee will provide a defined  
22 protected area around a co-channel or same

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1 channel site-based station.

2 And the FCC Wireless Bureau ruling  
3 on that -- in fact, Maritime asked for a  
4 declaratory ruling that the Bureau permit its  
5 site-based stations to be protected from the  
6 co-channel geographics surrounding licensee by  
7 the maximum assumed parameters permitted under  
8 the granted license.

9 Mr. Stone of the Bureau ruled that  
10 that is not correct, that a site-based  
11 licensee is entitled to protection of its  
12 actual operating station.

13 JUDGE SIPPEL: Do you have a  
14 written ruling on that?

15 MR. HAVENS: Yes, sir, two  
16 rulings. And the last ruling was not  
17 challenged by Maritime in its final ruling.  
18 I'll be glad to identify those and provide  
19 copies.

20 JUDGE SIPPEL: That would be -- I  
21 would like those rulings, yes. Are they in  
22 the form of a letter ruling or an order?

**NEAL R. GROSS**

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